

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM H. PENNEWELL,)
Plaintiff,)
v.) Civ. Action No. 09-021-GMS
OFFICER GRANT, OFFICER)
GRAJEWSKI, OFFICER SANTOS,)
and OFFICER BOTTERBUSCH,)
Defendants.)

MEMORANDUM

The plaintiff, William H. Pennewell (“Pennewell”), an inmate at the Howard R. Young Correctional Institution (“HRYCI”), Wilmington, Delaware. (D.I. 2.) He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 4.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915 and § 1915A.

I. BACKGROUND

The complaint does not indicate under what statute Pennewell proceeds, but alleges that a discriminatory act occurred on January 9, 2007. The civil cover sheet states that Pennewell was "tazed unconscious, suffered mental illness, broken teeth, and scars for life". It is evident that the claim is a civil rights claim and falls under the auspices of 42 U.S.C. § 1983.

II. STANDARD OF REVIEW

When a litigant proceeds *in forma pauperis*, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28

U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The legal standard for dismissing a complaint for failure to state a claim pursuant to §§ 1915(e)(2)(B) and § 1915A is identical to the legal standard used when ruling on 12(b)(6) motions. *Courteau v. United States*, 287 F. App’x 159, 162 (3d Cir. 2008) (not published); *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000); *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999)(applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff. *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); Fed. R. Civ. P. 8. A complaint does not need detailed factual allegations, however, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555 (citations omitted). The “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact).” *Id.* (citations omitted).

Pennewell is required to make a “showing” rather than a blanket assertion of an

entitlement to relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008). “[W]ithout some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only ‘fair notice,’ but also the ‘grounds’ on which the claim rests.” *Id.* (citing *Twombly*, 550 U.S. 556 n.3). Therefore, “‘stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest’ the required element.” *Id.* at 235 (quoting *Twombly*, 550 U.S. 556 n.3). “This ‘does not impose a probability requirement at the pleading stage,’ but instead ‘simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of’ the necessary element.” *Id.* at 234. Because Pennewell proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 127 S.Ct. at 2200 (citations omitted).

III. DISCUSSION

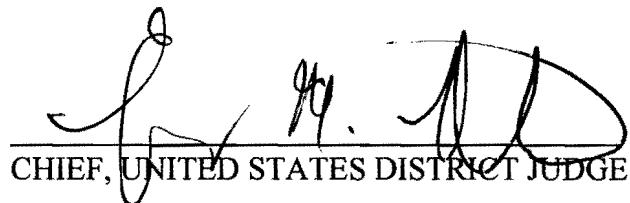
A civil rights complaint must state the conduct, time, place, and persons responsible for the alleged civil rights violations. *Evanko v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (citing *Boykins v. Ambridge Area Sch. Dist.*, 621 F.2d 75, 80 (3d Cir. 1980); *Hall v. Pennsylvania State Police*, 570 F.2d 86, 89 (3d Cir. 1978)). Additionally, when bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Even when reading the complaint in the most favorable light to Pennewell, he fails to state an actionable constitutional claim against any of the defendants. While his civil cover sheet contains a hint of his allegations, the complaint contains none. Hence, the defendants are not apprised of their alleged conduct or where it occurred. The defendants cannot adequately

respond to the complaint as it is currently pled. Pennewell is obligated to provide the grounds of his entitlement to relief, but he fails to do so.

IV. CONCLUSION

Based upon the foregoing analysis, the court will dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Pennewell will be given leave to amend his complaint. An appropriate order will be entered.



CHIEF, UNITED STATES DISTRICT JUDGE

June 22, 2009
Wilmington, Delaware

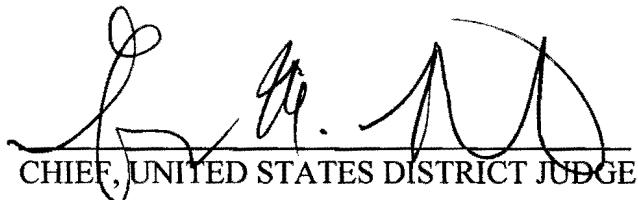
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM H. PENNEWELL,)
Plaintiff,)
v.) Civ. Action No. 09-021-GMS
OFFICER GRANT, OFFICER)
GRAJEWSKI, OFFICER SANTOS,)
and OFFICER BOTTERBUSCH,)
Defendants.

ORDER

At Wilmington this 21st day of June, 2009, for the reasons set forth in the
Memorandum issued this date

1. The complaint is **dismissed** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).
2. The plaintiff is given leave to amend the complaint. The amended complaint shall be filed within **thirty days** from the date of this order. If an amended complaint is not filed within the time allowed, then the case will be closed.



CHIEF, UNITED STATES DISTRICT JUDGE